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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/167,286	10/07/1998	ADEYINKA ADEDEJI	CN-8764	1184

23413 7590 06/25/2003

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EXAMINER

SZEKELY, PETER A

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 06/25/2003

29

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/167,286

Applicant(s)

ADEDEJI ET AL.

Examiner

Peter Szekely

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-- Th MAILING DATE of this communication app ars on th cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 January 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-9,11,12,14,15 and 17-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-9,11,12,14,15 and 17-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 26-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The phrase "at least one additive" renders the claims indefinite. It means that any number of materials, from fertilizer to moon rock powder and their blends, can be added to the composition. One of ordinary skill in the art would not be able to establish the metes and bounds of these claims. Furthermore said phrase makes the "consisting of" language completely, and utterly meaningless.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

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Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1, 2, 6, 8, 11, 12 and 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Campbell et al. 6,388,046 or Medoff et al. 6,448,307.

6. Campbell et al. disclose phosphorus containing flame retardants in claim 1, ABS resin in claim 14, UL ratings in claims 27-28, pallets in claim 36, impact modifiers in column 16, line 5 and organic phosphate esters in column 17, lines 24-30. Medoff et al. teach thermosetting resins in claim 7, impact modifiers in claim 30, flame-retardants in claim 34 and pallets in claim 46. Applicants' claims are not novel.

7. Claims 17, 19, 20, 23, 24-26, 28 and 29 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Nakano 5,165,990 or Campbell et al. 6,388,046.

8. Nakano recites high impact resistant polystyrene (HIPS) in column 4, line 37, polyphenylene ether in column 4, line 45, rubber like elastomers in column 9, lines 24-68 and column 10, lines 1-16 and triphenyl phosphate in column 12, line 13. Campbell et al. disclose phosphorus containing flame retardants in claim 1, polyphenylene ether/high impact polystyrene resin blends in claim 14, UL ratings in claims 27-28, pallets in claim 36, impact modifiers in column 16, line 5 and organic phosphate esters in column 17, lines 24-30. Applicants' claims are not novel.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 1, 2, 4, 6-9, 11, 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al. 6,388,046 or Medoff et al. 6,448,307, in view of Yamashita et al. 5,283,313 or Fuhr et al. 5,157,065, further in view of Miller 3,405,666, Fowler 3,814,031, Fowler et al. 3,951,078, Fowler et al. 4,007,694 or Alexander et al. 5,492,069.

12. The primary references have been discussed already. Yamashita et al. divulge polyetherimide in column 12, line 22, flame-retardants in column 12, line 33, polyethylene in column 14, lines 67-68 and pallets in Examples 17-20. Fuhr et al. reveal ABS in column 11, lines 7-11 and phosphorus compounds in column 7, lines 23-53. Fowler et al. ('078) exhibit a pallet design containing holes, while the rest of the tertiary references show various plastic pallet designs. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the polymers or Yamashita et al. to make pallets, because it is injection moldable and has excellent

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Izod impact and utilize the flame retardants of Fuhr et al. because they are customarily used in ABS. The tertiary references show that plastic pallets have been made for a long time in all conceivable designs.

13. Claims 17-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakano 5,165,990 or Campbell et al. 6,338,046, in view of Abolins 4,692,490, Haaf et al. 4,191,685, Haaf et al. 4,355,126 or Fujii et al. 5,334,636, further in view of Miller 3,405,666, Fowler 3,814,031, Fowler et al. 3,951,078, Fowler et al. 4,007,694 or Alexander et al. 5,492,069.

14. The primary references have been discussed already. Abolins presents PPE, HIPS, impact modifier, zinc oxide, zinc sulfide and polyethylene in Table 1. Haaf et al. (« 685) display the same Table and aromatic Phosphate esters are listed in column 3, lines 11-44. Haaf et al. ('126) list PPE, HIPS, polyethylene and triphenyl phosphate in Tables I-III. Fujii et al. describe PPE in claim 1, HIPS in column 4, lines 17-22, impact modifiers in column 5, lines 48-56 and triphenyl phosphate in column 6, line 55. Fowler et al. ('078) exhibit a pallet design containing holes, while the rest of the tertiary references show various plastic pallet designs. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the Flame retardants and impact modifiers of the secondary references in the compositions of the primary references, since it is well proven that said use is known and customary. The tertiary references show that plastic pallets have been made for a long time in all conceivable designs.

15. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Peter Szekely whose telephone number is (703) 308-2460. The examiner can normally be reached on 7:00 a.m-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
June 20, 2003